IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Misc. Writ Petition No. 6557 S/S of 2001
Old No. 38136 of 2000

Mohd. Younus Ahmed … Petitioner

Versus

Union of India and others … Respondents

Hon'ble Irshad Hussain, J.
Hon'ble M.M. Ghildiyal J.

By means of this petition, the petitioner has prayed for issue of a writ in the nature of certiorari quashing the order dated 05.05.2000 (partly) by which partial redressal has been granted and as well communication letter dated 31.05.2000 issued by respondent no. 4. He has further prayed for issue of a direction in the nature of mandamus commanding the respondents to treat the petitioner as promoted w.e.f. from the date of supersession and to give the petitioner all the benefits of promotion.

Heard Sri J.C. Joshi learned counsel for the petitioner and Sri Rakesh Thapliyal learned counsel for the respondents.

The brief facts of the case are that the petitioner was appointed in Army Medical Corps on 24.03.1984. On 26.05.1987 he was promoted to the rank of NK/SKT and again w.e.f. 06.04.1990 he was promoted to the rank of Hawaldar/SKT.

In the year 1996, the petitioner has passed the Senior Cadre Courses vide letter no. 6003-J/SKT/98 dated 16.04.1998 of the Record Office A.N.C. Lucknow, the petitioner was informed that he has been superseded for promotion to the rank of Naib Subedar/SKT because of non fulfilling the A.C.R. grading criteria as per Army Headquarter letter no. B/33513/AG/PS-2© dated 18.01.1993. From this letter, the petitioner came to know that the A.C.R. of the year 1996-1997 was not according to the behaviour and devotion of the petitioner.

The petitioner has submitted a non statutory complaint against the supersession by the authorities of Record Office of A.N.C.

Lucknow which was rejected by the office of D.G.M.S. vide Head Quarter Southern Command letter No. PC/220203/MYA/6/N-3(D) dated 12.12.1998.

Learned counsel for the petitioner has stated that the petitioner had never been served with any warning, yet the petitioner has been superseded for promotion vide letter no. 6003-J/SKT/98 dated 16.04.1998 to the rank or Naib Subedar/SKT because of non fulfilling the A.C.R. grading criteria. Since 1990, when the petitioner was promoted to the post of Haldwar/SKT till the petitioner was superseded in the year 1999. The petitioner has never been intimated of any adverse remarks against him.

The petitioner presented a statutory complaint before the respondent no. 4, who had forwarded the same to the respondent no. 2 for necessary action. Respondent no.2, after examining in detail and after perusal of all the relevant documents, the comments / recommendations of the authorities, found that the petitioner has been accessed in a biased manner in C.R. of 1996-1997 by I.O./R.O. and the assessment appears to be too harsh strict and inconsistent compared with the contemporary profile of the petitioner.

Respondent no. 2 set aside the C.R. of 1996-1997 and has further directed for reconsidering the petitioner for promotion to the rank of Naib Subedar in accordance with the policy.

Learned counsel for the petitioner has submitted that the respondent no. 2 had himself admitted the fact that the assessment of A.C.R. of 1997 is too harsh, strict and inconstant and has quashed the same yet has not ordered for promotion of the petitioner to the rank of Naib Subedar along the batch mates.

Aggrieved, by the order of respondent no. 2 not promoting the petitioner, he has filed present writ petition. The relevant portion of the order passed by respondent no. 2 is as under:-

> *"I, therefore, direct the partial redressal to be granted to No. 13957859N-Hav(SKT) M.D. Mohd. Yunus Ahmad AMC in his statutory complaint dated 13.01.1999 against suppression*

by way of setting aside the C.R. 1996-1997 and reconsidering him for promotion to the rank of Naib Suberdar in accordance with the policy."

A counter affidavit has been filed by the respondent annexing the letter dated 23.05.2000 stating therein that in pursuance to the order passed by Army Head Quarter on 05.05.2000, the petitioner has been reconsidered afresh for promotion to the rank of Naib Subedar against the vacancy of 01.06.2000, but this time also he was found ineligible for promotion to the rank of Naib Subedar due to not fulfilling of A.C.R. grading criteria and also having incurred red ink entry on 18.09.1999. Therefore, the petitioner has now been superseded for promotion to the rank of Naib Subedar by his eligible and qualified juniors till 30.09.2004. This order was annexed by the respondent in the counter affidavit. The petitioner has submitted that at the time of filing of petition he was not in possession of this letter, consequently, he has moved amendment application for quashing of order dated 23.05.2000. Amendment application was allowed.

Learned counsel for the petitioner had moved statutory complaint against the vacancy of March 1998, and the respondent no. 2 while passing the order on statutory complaint against the petitioner on 05.05.2000 has set aside the A.C.R. of 1996-1997 and further directed for reconsidering the petitioner for promotion.

The contention of the petitioner is that he should have been considered against the vacancy of March 1998. From the order of respondent no. 2 dated 05.05.2000 it is clear that the A.C.R. of the petitioner for the year 1996-1997 was quashed by the competent authority and the respondents were directed for reconsideration of petitioner for his promotion. Reconsideration should have been against the vacancy of 1998. I found force in the submission of the learned counsel for the petitioner. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Apex Court in the case of R.K. Singh Vs. State of U.P. reported in 1991 suppl. (2) SCC

case page 126. In para-2 of the aforesaid judgment, the Hon'ble Apex Court has held as under:-

> *"There is no dispute that during the pendency of this appeal the appellant's representation against the adverse entries has been allowed and these entries have been expunged from his service record. Since the adverse entries were expunged the State Government by its order dated January 24, 1991 granted Selection Grade to the appellant with effect from the date he takes over charge. We fail to appreciate the view taken by the State Government. Once the adverse entries awarded to the appellant were expunged the appellant is entitled to Selection Grade with effect from January 1, 1986 the date on which he was eligible for grant of Selection Grade. We, accordingly, allow the appeal, set aside the order of the Central Administrative Tribunal and modify the order of the State Government dated January 24, 1991 and direct that the appellant shall be treated in Selection Grade with effect from January 1, 1986 and he will be entitled to all other consequential benefits with effect that date. As regards appellant's further promotion, he will be considered for promotion in accordance with Rules."*

It is not disputed that the petitioner had filed statutory complaint against the supersession to the post of Naib Subedar/SKt against the vacancy of 1998. The competent authority has found that the adverse entries, on the basis of which the petitioner was not promoted in the year 1998, was harsh strict and consequently and was pleased to seta aside the same. After the entries of C.R. in the year 1996-1997 was set aside, present petitioner along with the other petitioner was entitled to be considered for promotion against the vacancy of 1998. However, the respondents, instead of considering the petitioner against the vacancy of 1998, considered him against the vacancy of 2000, and have taken into account, the C.R. of 1999 which is not sustainable in the eye of law.

Since the petitioner was entitled to be considered against the vacancies of 1998 along with consequential benefit, C.R. of 1999 cannot be taken into account.

In view of the aforesaid facts and circumstances and the law laid down by the Hon'ble Apex Court in the case of R.K. Singh Vs. State of U.P. (Supra) order dated 13.05.2000 of the Head Quarter Central Command (Med) communicated vide letter no. 356003-J/SKT/SUP/2000 dated 23.05.2000 of Major S.N. Pal, SRO for IOC Records, is quashed.

The respondents are directed to reconsider the petitioner for promotion against the vacancy of 1998 in accordance with law.

With these directions, the writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J.) **(Irshad Hussain, J.)**

Date: 2nd April, 2004
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